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Supreme Court

of the

United States

October Term, 1969

No. 585

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, et al,

Petitioners,

vs.

SEABOARD COAST LINE RAILROAD COMPANY and BROTHERHOOD OF LOCOMOTIVE ENGINEERS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Allan Milledge
Richard L. Horn
1300 Northeast Airlines Bldg.
150 S. E. Second Avenue
Miami, Florida 33131
Attorneys for Respondent,
Brotherhood of Locomotive Engineers

Of Counsel:
Ross, Kraushaar & Bennett
Cleveland, Ohio

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Does a federal district court possess jurisdiction under this Court's holding in *General Committee of Adjustment v. Missouri-Kansas-Texas R. Co.*, 320 U. S. 323 (1943), to determine whether particular issues are within the jurisdiction of either the certified exclusive collective bargaining representative for firemen or engineers or both, where a merger has combined two carriers, one having bilateral agreements with the engineers and firemen concerning these issues, one having tripartite agreements concerning these issues, and where the carrier and each of the unions have separately agreed to negotiations "in each craft" as the mode for merging the collective bargaining agreements?

2. Where two carriers have merged to form a new carrier, and the certified exclusive collective bargaining representatives for the crafts of firemen and engineers have separately agreed pursuant to §5 (2) (f) of the Interstate Commerce Act to a *mode* of merging their prior collective bargaining agreements different than the mode provided under the Railway Labor Act, does a federal district court possess jurisdiction to adjudicate claims by the firemen's representative of a right to notice, participation in negotiations and a veto over any agreement reached between the engineers and the merged carrier based upon the procedures of the Railway Labor Act which it has agreed are inapplicable?

COUNTERSTATEMENT OF THE CASE

Petitioners' statement of the facts of this case, representing them to be "basically simple", although admitting to their "surface complexity", (Petition, p. 5) does not adequately present to this Court the unique factual pattern out of which this case arose. This pattern, involving a railroad merger, consummated pursuant to the provisions of the Interstate Commerce Act, 49 U.S.C. §5, and the unique provisions of the separate bilateral employee "Protective Agreements" entered into by the carriers prior to the consummation of the merger with each of their unions, is not likely to be repeated.

The simplistic approach to the facts taken by the petitioners is clearly deliberate, for the first question which they submit as presented by the Petition ignores the merger and ignores the "Protective Agreements" which are the primary factors in the case and in the decisions below. No question of importance is presented by this unique factual pattern, the Courts below have correctly resolved the issues which are, in fact, presented, and the decision is not in conflict with any decision of this Court or of another Court of Appeals.

Because of the importance of the facts to this case we shall state them with some detail.

A. *Background of the Merger*

The ACL and SAL[1] entered into a Plan of Merger

[1]The abbreviations to be used in this Brief will be consistent with those used in the Petition, Atlantic Coast Line Railroad Company: ACL; Seaboard Air Line Railroad Company: SAL; Seaboard Coast Line Railroad Company: SCL; Brotherhood of Locomotive Firemen and Enginemen: BLF&E; Brotherhood of Locomotive Engineers: BLE. All emphasis will be added unless designated to the contrary.

dated May 19, 1960 and filed a joint application for merger with the Interstate Commerce Commission, which was identified as Finance Docket No. 21215 (R. Vol. I 75). The Interstate Commerce Commission by Order dated December 13, 1963 approved the merger, 320 I.C.C. 122. As a condition of approval of the merger, the Interstate Commerce Commission imposed protective conditions for the benefit of affected employees pursuant to Section 5(2)(f) of the Interstate Commerce Act, 49 U.S.C. §5(2)(f), similar to those imposed in *Southern Railway Co.—Control-Central of Georgia Railway Co.*, 317 I.C.C. 557.

The Florida East Coast Railroad, the Railway Labor Executives' Association (RLEA) and others appealed the ICC decision to a three-judge district court. *Florida East Coast Ry. Co. v. United States*, 242 F.Supp. 14 (M.D. Fla. 1964). The District Court set aside the order of the ICC based upon the Clayton Act, not reaching the question of the adequacy of the employee protective conditions. This Court reversed and remanded the case to the three-judge district court, *Seaboard Air Line R. Co. v. United States*, 382 U.S. 154 (1965). The district court, on remand, approved the merger and the employee protective conditions previously imposed by the ICC.

Deeming the *Southern-Central* conditions inadequate for the protection of the employees they represented, the unions filed another appeal from the District Court's decision to this Court. Case No. 640, O. T. 1967. Simultaneously the unions were negotiating with the carrier to achieve a greater measure of security for the affected employees. These negotiations resulted in two separately negotiated and separately executed protective agreements. The first, executed on November 3, 1966, was entitled

"Agreement for Protection of Employees in Event of Merger of Seaboard and Coast Line Railroads" (R. Vol. I, 89-109), and included within its scope all employees represented by the 17 separate organizations who were members of the Railway Labor Executives Association (RLEA). This agreement included the crafts of firemen and hostlers represented by the petitioner BLF&E. This agreement by its terms specifically provided that:

> "It shall be considered and construed as a *separate agreement* between the Seaboard, Coast Line and *each* of the labor organizations signatory hereto." (Section 7(b), R. Vol. I, 100)

The second agreement entitled "Agreement for Protection of Employees represented by the Brotherhood of Locomotive Engineers in Event of Merger of Seaboard and Coast Line Railroads" (R. Vol. I, 110-122) was executed on November 10, 1966 between the carriers and the respondent BLE for employees in the engineers craft.

As a part of these protective agreements (sections 7(b), R. Vol. I, 84, 99) the labor organizations agreed to dismiss their appeals then pending before this Court. Such appeals were withdrawn and on April 10, 1967 this Court gave final approval to the merger, 386 U.S. 544 (1967), which was then consummated on July 1, 1967.

B. *The Protective Agreements*

In any situation where carriers merge to form a new entity, it becomes necessary to combine the collective bargaining contracts and seniority districts and rosters pre-

viously in effect upon the former carriers into a unified agreement, districts, and roster for the merged carrier. On the former ACL and SAL, the BLE was the collective bargaining representative, certified as such by the National Mediation Board, for the craft or class of engineers. (R. Vol. I, 16-17). The BLF&E occupied a similar position on both former carriers with respect to the craft or class of firemen and hostlers (R. Vol. I, 75). Each organization had collective bargaining agreements concerning rules, rates of pay and working conditions, hereafter called Schedule Agreements, in effect with the former carriers.

The merger required change, and the *mode* of change was intended to be, and was provided in the Protective Agreements:

> "The fundamental scope and purpose of this Agreement is . . . (c) *to prescribe the procedures by which existing agreements between the parties shall be modified and consolidated to conform with the changes in services, facilities and operations involved in such merger.*" (R. Vol. I , 93, 112).

The employee representatives *in each craft* including BLF&E, and the carrier agreed in Section 3(b) of its Protective Agreement, as follows:

> "The merged Company will take over and assume all contracts, schedules and agreements between Seaboard, Coast Line, and the labor organizations signatory hereto concerning rates of pay, rules and working conditions and fringe benefits in effect at the time of consummation of the said merger and will be bound by the terms and pro-

visions thereof, *and such agreements will be merged into new agreements through negotiations covering all employees of the Merged Company IN EACH CRAFT with consolidation of seniority rosters and seniority districts for each class and craft of employees.* (R. Vol. I, 96-97).

The separate Protective Agreement with the BLE similarly provided for merger of agreements "* * * through negotiations covering all employees of the Merged Company IN EACH CRAFT with consolidation of seniority rosters and seniority districts for engineers." (R. Vol. I, 113). Thus, negotiations "in each craft" were separately agreed upon by the BLF&E and the carrier in its Agreement and between BLE and the carrier in its Agreement as the exclusive mode by which the parties were to arrive at new agreements, districts, and rosters.

Appendix F to the BLF&E Agreement (R. Vol. I, 106) and Appendix D to the BLE Agreement (R. Vol. I, 118) each provide a "Memorandum of Understanding" regarding notices of changes under the Agreements. These Memoranda, by agreement of the parties, *alter* the scheme of change provided by the Railway Labor Act, 45 U.S.C. §151 et seq., as to "* * * intended changes contemplated because of the merger of the Seaboard and Coast Line * * *". (R. Vol. I, 106, 118). As to such changes, and "* * * any dispute or controversy * * * with respect to the interpretation or application of any provisions of this Agreement, or of any implementing agreement * * *" (R. Vol. I, 98, 114), binding arbitration is provided in accordance with Section 4 of the Protective Agreements, and the "* * * issues submitted for determination shall not include any question as to the right of the carrier to make operational changes * * *". (R. Vol. I, 106, 118).

Pursuant to the duties undertaken by the parties in their separate Protective Agreement, representatives of the BLE and the SCL met over a period of many months and, choosing between the provisions of the two former schedule agreements those most advantageous to the employees and the carrier, they hammered out a new Schedule Agreement for the craft of engineers together with 6 "implementing agreements" (R. Vol. I, Exhibit C to Complaint with appendices) governing the merger of seniority rosters and districts on the new carrier. Upon agreement of the parties these agreements were to become effective on January 16, 1968 (R. Vol. I, 31). Based upon a threat by the BLF&E to either sue or strike or both if the agreements were placed into effect BLE and SCL agreed to postpone the effective date to January 23, 1968, (R. Vol. I, 32). In the interim unfounded "Brush-fire" litigation began to break out across the south to prevent the implementation of the agreement reached between BLE and the carrier.[2]

With rumors and threats of additional litigation rife, the SCL declined to make the BLE agreements effective, and a week passed after the agreed implementation date. BLE, therefore, brought suit in the Middle District of Florida, where the District Court which had reviewed the

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[2]Suits were initially commenced by individuals against BLE and SCL in the Superior Court of Chatham County, Georgia, and the Court of Common Pleas, Florence County, South Carolina. After the initial issuance of ex-parte temporary restraining orders, in each instance the courts dissolved these orders after some delay.

Subsequent to the Jacksonville and Miami litigation involved below, additional suits were brought in the federal court in Richmond, Virginia and the state court in Birmingham, Alabama. The unsuccessful Georgia litigants also filed a complaint with the ICC. The ICC dismissed the complaint by Order dated June 10, 1968 holding that the complaints were the subject of binding arbitration provided in the protective agreements

entire merger proceedings was located, in order to compel the implementation of the agreements, covering engineers, which had been freely and laboriously reached pursuant to the Protective Agreement between the carrier and the certified exclusive collective bargaining representative for the craft of engineers.

BLE filed its complaint January 29, 1968, and obtained an emergency hearing the following day from Judge William McRae who had been a member of the 3 judge panel which had reviewed the entire merger proceedings. After hearing (R. Vol. I, 13-65) the Court made Findings of Fact and Conclusions of Law (R. Vol. I, 66-70) and entered a Preliminary Injunction dated January 30, 1968, (R. Vol. I, 71-72) requiring the SCL to place the agreements into effect throughout the SCL system with the exception of the No. 2 Eastern Seniority District where implementation was then enjoined by the South Carolina Court of Common Pleas. The South Carolina injunction was later dissolved and implementation completed throughout the SCL system.

On the same day, January 30, 1968, the BLF&E and certain individuals filed suit in Miami seeking to enjoin the implementation of *all* of the engineers agreements. In its two count complaint (R. Vol. II, 8-31) the BLF&E purported to invoke the jurisdiction of the court based upon the Railway Labor Act and claimed that certain provisions of the new engineers Schedule Agreement (Exhibit 6) were inconsistent with former ACL tripartite provisions in the former engineers and firemen contracts (Exhibits 3, 4) and that no formal notice under Section 6 of the Railway Labor Act 45 U.S.C. §156 had been given to BLF&E in this connection (R. Vol. II, 12-19, paragraphs 9-20).

Therefore, since BLF&E had not itself yet reached agreement with the carrier on a new firemen's agreement, BLF&E contended that BLE and the carrier could not implement the new engineers agreements. BLF&E sought an injunction to prevent such implementation.

In Count II of the Complaint the individual plaintiffs were alleged to represent a large group of former SAL employees with seniority "* * * as road firemen and road engineers." (R. Vol. 11, 21). These employees were then alleged to have been "* * * discriminated against * * * needlessly and unjustly", (R. Vol. II, 26), because the new engineers agreement did not adopt the dual system of separate yard and road seniority for engineers which had prevailed on the former SAL. These individuals similarly sought an injunction to prevent implementation of the engineers agreements. A hearing was set for February 8, 1968.

In the meantime the BLF&E and the individuals who had filed the Complaint in Miami sought to intervene in the pending action in Jacksonville to assert the same contentions which they had raised in Miami (compare R. Vol. I, 74-86 with R. Vol. II, 8-29). After hearing on February 5, 1968, the District Court for the Middle District of Florida per Judge William McRae entered an Order (R. Vol. I, 41-43) denying intervention, in which the Court determined that the proposed intervenors lacked legal standing to intervene in order to assert their contentions, and that their contentions involved matters over which the Court lacked jurisdiction.

The defendants in the Miami action, SCL and BLE, filed Motions to Dismiss the complaint based upon lack

of jurisdiction in the District Court, failure to state a claim upon which relief could be granted, and res judicata based upon the determination of the District Court for the Middle District of Florida. (R. Vol. II, 32-33, 46-50)

After hearing on February 8, 1968, (R. Vol. II, 50-72) the Miami Court entered an Order (R. Vol. II, 107) granting the defendants' Motions to Dismiss the complaint and allowing the plaintiffs 20 days within which to amend their complaint. Thereafter the plaintiffs filed an Election to stand on the complaint, which resulted in the entry of a Final Judgment by the District Court. (R. Vol. II., 110).

Appeals to the Court of Appeals, Fifth Circuit were taken in both cases, which were consolidated. The Court affirmed the decisions below, Circuit Judge Thornberry dissenting. *Brotherhood of Locomotive Firemen and Enginemen v. Seaboard Coast Line R.R. Co., et al.*, 413 F.2d 19 (5th Cir. 1969).

REASONS FOR DENYING THE WRIT

The decisions of the Courts below premised upon the factors of a railroad merger and the unique provisions of the "Protective Agreements" present no question worthy of review by this Court.

The fact of the matter is that this case involves nothing more than the anguished outcries of a labor organization, petitioner BLF&E, which finds itself uncomfortably hoist on a petard of its own making, the separately negotiated, separately concluded, and separately construed[3] Protective

[3]See, BLF&E Protection Agreement (Section 7(a), R. Vol. I, 100).

Agreement which it solemnly concluded with the carriers involved prior to their merger. No novel principles of National or lesser importance are involved in this case, which rests upon a principle conclusively determined by this Court 26 years ago in *General Committee of Adjustment of BLE v. Missouri-Kansas-Texas RR. Co.*, 320 U.S. 323 (1943) and its companion case *General Committee of Adjustment of BLE v. Southern Pacific R.R. Co.*, 320 U.S. 338 (1943).

In those cases identical disputes arose over who was the proper employee representative, BLE, BLF&E, *or both of them*, for the negotiations of certain rules governing the calling of individuals for emergency engineers work and demotion of engineers to be firemen. In the *M-K-T* case the carrier had concluded an agreement with the BLF&E concerning these matters, and the BLE brought an action for a declaratory judgment that it was the exclusive representative of engineers and that the agreement between BLF&E and the carrier was consequently invalid. The carrier sought a declaration of the rights of the parties and the BLF&E sought a declaration of the validity of the agreement. The District Court dismissed the complaint holding that the carrier could contract with either BLE or BLF&E on these issues. The Court of Appeals, Fifth Circuit, reversed, holding that both BLE and BLF&E had an interest in the controversy, that all parties should meet and, if possible agree, and that in the absence of such agreement the carrier could terminate the BLF&E agreement. 132 F.2d 91. (5th Cir. 1943) On certiorari this Court reversed, in a broad holding clearly indicating the lack of jurisdiction in the courts to resolve disputes of this nature.

"It is our view that the issues tendered by the present litigation are not justiciable- that is to say that Congress by this Act has foreclosed resort to the Courts for enforcement of the claims asserted by the parties."

* * *

"It seems to us plain that when Congress came to the question of these jurisdictional disputes, it chose not to leave their solution to the courts. As we have already pointed out, Congress left the present problems far back in the penumbra of those few principles which it codified. Moreover, it selected different machinery for their solution. Congress did not leave the problem of inter-union disputes untouched. It is clear from the legislative history of §2 Ninth, that it was designed not only to help free the unions from the influence, coercion and control of the carriers but also to resolve a wide range of jurisdicitional disputes between unions or between groups of employees. H. Rep. No. 1944 Supra, p. 2; S. Rep. No. 1065, 73rd Cong., 2d Sess., p. 3. *However wide may be the range of jurisdictional disputes embraced within §2 Ninth Congress did not select the courts to resolve them.*" 353 U.S. at 327, 336.

The complaints of the BLF&E below are precisely the same as those determined to be non-justiciable by this Court in *M-K-T. Accord, General Committee of Adjustment for BLE v. Southern Pacific Co.*, 320 U.S. 338 (1943); *Division No. 14, Order of R. Telegraphers v. Leighty*, 298 F.2d 17 (4th Cir. 1962). Petitioners' argument to the contrary is based solely upon the fact that on *one* of the pre-

merger carriers, certain tri-partite provisions were in effect as a part of the BLE and BLF&E agreements, governing certain of these disputed issues. Petitioner asserts that as a result of these few tri-partite provisions the jurisdictional disputes concerning these issues were "solved" (apparently for all time, for all carriers, and regardless of any other circumstances) and that no such dispute is therefore presented under the facts of this case.

The flaw in this argument is, of course, as clearly pointed out by the Court of Appeals below, that the merger of the carrier upon which these agreements were in effect with a carrier which had no such agreements, and the separate "Protective Agreements" entered into in anticipation of the merger, have necessarily and substantially altered the situation.

As stated by the Court of Appeals below:

> * * * [A] mereger by its very nature requires changes in the status quo. Were it otherwise, the employee protective agreements negotiated by both the Firemen and the Engineers would have been unnecessary. Here the merger required a consolidation of the rights of the Firemen and the Engineers on the constituent railroads, with a merger of conflicting rights of each union as against the merged railroad and vis-a-vis the other union. The Engineers have consolidated their prior agreements through a new agreement which on its face applies only to engineer employees, although it indirectly affects fireman employees. The negotiations through which the agreement was reached were held bilaterally, as the separate employee protective agreements by

providing for negotiations "in each craft" obviously contemplated and the principle of exclusive representation would seem to require. *See Virginian Ry. v. System Federation No.* 40, 1937, 300 U.S. 515, 548; *Brotherhood of Locomotive Engineers v. Chicago & North Western Ry.*, 8 Cir. 1963, 314 F.2d 424, 431." 413 F.2d at 25.

Recognizing the merger and the "Protective Agreement" as having irrevocably altered the pre-merger situation, the Court of Appeals below appropriately held:

> "This Court cannot say that simply because portions of the subject matter of the Engineers-Seaboard agreement formerly were the subject matter of tripartite agreements they necessarily must remain the subject of tripartite negotiations following merger. * * * Underlying the issue of whether the provisions of the Engineers-Seaboard agreement should be in a two-party or a three party agreement, having been in bipartite agreements on one constituent railroad and tripartite agreements on the other prior to the merger, is the necessity of determining whether the provisions are within the jurisdiction of one union or the other or both, for the provisions are not beyond dispute within the jurisdiction of one bargaining representative or the other. Only the National Mediation Board has jurisdiction to resolve this underlying issue. Thus the asserted "invalidity" of the Engineers-Seaboard agreement depends upon the determination of a jurisdictional dispute between two railway labor organizations, a matter which a district court has no jurisdiction to decide." 413 F.2d at 25.

Respondent BLE submits that this jurisdictional holding by the Court of Appeals below is clearly correct, and presents no issue which would justify review on certiorari by this Court. In an abundance of caution, however, respondent will also answer the merits of petitioners' arguments, which are, in fact, similarly groundless as a result again of its own action in executing the BLF&E Protective Agreement.

Petitioners' entire merits argument[4] is dependent upon the assertion that the "mandatory procedures * * * of the Railway Labor Act governing the alteration of existing labor agreements" (Petition, p. 3) are applicable to this case and have been violated by the action of respondents in negotiating and concluding the BLE-SCL agreements without a Section 6 notice having been served on BLF&E. In ordinary circumstances Section 6 procedures[5] provide the *mode* by which existing collective bargaining agreements under the Railway Labor Act must be changed. The circumstances in the present case, however, are decidedly not ordinary. The flaw in the petitioners' argument here, as in its argument on jurisdiction, is that, by its own action in entering into its "Protective Agreement", the Railway Labor Act Section 6 procedures upon which it relies have been rendered inapplicable.

As pointed out in the statement of the case above, the two Protective Agreements here involved are perfectly explicit in stating:

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[4]With the exception of their afterthought position on "Voluntary" arbitration, dealt with below.

[5]Section 6, 45 U.S.C. §156; Section 2, Seventh, 45 U.S.C. §152, Seventh.

> *The fundamental scope and purpose of this Agreement is* * * * *(c) to prescribe the procedures by which existing agreements between the parties shall be modified and consolidated to conform with the changes in services, facilities and operations involved in such merger.* (R. Vol. II 77, 96).

BLF&E and BLE in these Protective Agreements, agreed separately with the carriers that in the event of merger of the carriers the mode of negotiations to reach the merged collective bargaining agreements necessitated thereby would "be * * * *negotiations* covering all employees of the Merged Company *in each craft*, with consolidation of seniority rosters and seniority districts for each class and craft of employees." (R. Vol. II 81, compare R. Vol. II 97). No provision was made in these Protective Agreements for tripartite negotiations, and BLF&E freely contracted for this mode of negotiation.

The ordinary scheme of procedures to change agreements under the Railway Labor Act are set forth in the Petition at page 11. This involved scheme of written notice of requested change, negotiation, mediation, proffered arbitration, Presidential Emergency Board, and finally self-help, while admirably suited to the ordinary collective bargaining problems which arise in the industry is not so well suited to the problems which arise in the context of a merger where two separate contracts must be merged to form one, and consolidation of seniority rosters and districts becomes essential.

For the changes necessitated by the merger of the ACL and SAL, the carriers and the unions *agreed on the procedures which would be followed in the Protective*

Agreements. These agreements, which provide modes of change different than those prescribed in the Railway Labor Act are specifically sanctioned by the Act.

Section 2, Seventh of the Railway Labor Act, 45 U.S.C §152, Seventh provides as follows:

> "Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements *except in the manner prescribed in such agreements* or in Section 156 of this title."

It is clear then that the Railway Labor Act itself contemplates that the parties can agree to a manner of changing agreements different from that prescribed in Section 6 of the Act. This is precisely what the parties did in the *Protective Agreements.* Compare, *Brotherhood of Locomotive Engineers v. Chicago Northwestern R. Co.*, 314 F.2d 428 (8th Cir. 1963), *Cert. den.* 375 U.S. 819 (1963).

The BLF&E, however, has premised its complaints and the alleged jurisdiction of the Courts below upon the fact that it did not receive a Section 6 Notice, although it has agreed to a different mode of change.

Finally the answer to BLF&E's argument that Section 6 procedures of the Railway Labor Act were applicable under the circumstances of this case is provided by its own admission that the Protective Agreements *did,* in fact, provide the mode for the merger of agreements with *compulsory* arbitration being provided for its disputes with the carrier. Petition, p. 16.

The significance of this admission is that under Section 6 procedures neither party to a "major dispute" under the Railway Labor Act, *Elgin J. & E. R. Co. v. Burley*, 325 U.S. 711 (1945), can be required to submit the dispute to compulsory arbitration, *Brhd. of Locomotive Engineers v. Baltimore & O. R. Co.*, 372 U.S. 284 (1963). In its Protective Agreement on the other hand, BLF&E agreed to compulsory arbitration to resolve its disputes with the carrier over "* * * changes contemplated because of the merger." (R. Vol. I, 106). In asserting that the decisions of the Courts below "frustrated" the compulsory arbitration which was provided in its Protective Agreement BLF&E has underlined the applicability of these procedures, rather than the Section 6 procedures, for resolving its disputes with the carrier in merging its own agreements.

Clearly as an afterthought, BLF&E for the first time in this case in the Petition has seized upon their arbitration clause and makes the assertion that "tri-party arbitration" had been "agreed upon by all three parties" all along. (Petition, pp. 16-17). This novel assertion appears nowhere in the record of this case, nowhere in petitioners' pleadings, and nowhere in previous briefs or arguments.

Of course, it is perfectly plain that the separate "Protective Agreements" nowhere contemplate "tri-party arbitration". If they did, why has BLF&E never made any effort to invoke arbitration or to assert its claim for such arbitration prior to its Petition for Certiorari to this Court? The Petition lamely complains that the decisions of the Courts below refusing to resolve the underlying jurisdictional dispute have "frustrated" arbitration.

The federal Courts' decisions obviously could not and did not "frustrate" "tri-party arbitration" which had never been agreed, nor could these decisions affect BLF&E's right to the bilateral compulsory arbitration to which it had agreed in its Protective Agreement, in place of Section 6 procedures.

In sum Petitioners' contradictory assertions to this Court regarding the substance and effect of the decisions below provide no basis for review on certiorari by this Court. The Petition should be denied.

Respectfully submitted,

Allan Milledge

ALLAN MILLEDGE

Richard L. Horn

RICHARD L. HORN

1300 Northeast Airlines Bldg.
150 S.E. Second Avenue
Miami, Florida 33131
Attorneys for Respondent
Brotherhood of Locomotive
Engineers

October, 1969